



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2014-0380]**

**Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 15 individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV) from operating CMVs in interstate commerce. The regulation and the associated advisory criteria published in the Code of Federal Regulations as the “Instructions for Performing and Recording Physical Examinations” have resulted in numerous drivers being prohibited from operating CMVs in interstate commerce based on the fact that they have had one or more seizures and are taking anti-seizure medication, rather than an individual analysis of their circumstances by a qualified medical examiner. If granted, the exemptions would enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs for 2 years in interstate commerce.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA-2014-0380 using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the

on-line instructions for submitting comments.

- Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1-202-493-2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, S.E., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the Federal

Register published on January 17, 2008 (73 FR 3316; January 17, 2008). This information is also available at <http://Docketinfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Horan, III, Director, Office of Carrier, Driver and Vehicle Safety, (202) 366-4001, or via email at [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), or by letter FMCSA, Room W64-113, Department of Transportation, 1200 New Jersey Avenue, S.E., Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds “such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.” The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 15 individuals listed in this notice have recently requested an exemption from the epilepsy prohibition in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

FMCSA provides medical advisory criteria for use by medical examiners in determining whether drivers with certain medical conditions should be certified to operate CMVs in intrastate commerce. The advisory criteria indicate that if an individual has had a sudden episode of a non-epileptic seizure or loss of consciousness of unknown

cause which did not require anti-seizure medication, the decision whether that person's condition is likely to cause the loss of consciousness or loss of ability to control a CMV should be made on an individual basis by the medical examiner in consultation with the treating physician. Before certification is considered, it is suggested that a 6-month waiting period elapse from the time of the episode. Following the waiting period, it is suggested that the individual have a complete neurological examination. If the results of the examination are negative and anti-seizure medication is not required, then the driver may be qualified.

In those individual cases where a driver had a seizure or an episode of loss of consciousness that resulted from a known medical condition (e.g., drug reaction, high temperature, acute infectious disease, dehydration, or acute metabolic disturbance), certification should be deferred until the driver has fully recovered from that condition, has no existing residual complications, and is not taking anti-seizure medication. Drivers who have a history of epilepsy/seizures, off anti-seizure medication and seizure-free for 10 years, may be qualified to operate a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5-year period or more.

### **Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your

submission. To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2014-0380” and click the search button.

When the new screen appears, click on the blue “Comment Now!” button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

### **Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2014-0380” and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking.

### **SUMMARY OF APPLICATIONS**

*Allen James Broll*

Mr. Broll is a 26 year-old class A CDL holder in Minnesota. He has a history of spontaneous subdural hematoma. He has no history of seizure. He takes anti-seizure

medication as a prophylactic measure. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Broll receiving an exemption.

*Dennis Lee Brown*

Mr. Brown is a 69 year-old class C CDL holder in Arizona. He has a history of epilepsy and has remained seizure free since 1999. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Brown receiving an exemption.

*Grover M. Curtis*

Mr. Curtis is a 52 year-old class A CDL holder in Oregon. He has a history of a seizure disorder and has remained seizure free since 2004. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Curtis receiving an exemption.

*Harold James Durkee*

Mr. Durkee is a 64 year-old driver in Wisconsin. He has a history of a seizure disorder and has remained seizure free since 1977. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Durkee receiving an exemption.

*Timothy W. Eyerly*

Mr. Eyerly is a 59 year-old driver in Pennsylvania. He has a history of a seizure disorder and has remained seizure free since 1981. He takes anti-seizure medication

with the dosage and frequency remaining the same since 2002. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Eyerly receiving an exemption.

*Mark A. Grafton*

Mr. Grafton is a 61 year-old class A CDL holder in Indiana. He has a history of a seizure in October 2014 secondary to a stroke. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Grafton receiving an exemption.

*Zachary Kyle Griffin*

Mr. Griffin is a 28 year-old driver in North Carolina. He has a history of post-traumatic seizure disorder and has remained seizure free since 2009. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Griffin receiving an exemption.

*Denton L. Hine*

Mr. Hine is a 55 year-old class A CDL holder in Washington. He has a history of a seizure disorder and has remained seizure free since 1979. He takes anti-seizure medication with the dosage and frequency remaining the same since 1988. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Hine receiving an exemption.

*Matthew M. Lohman*

Mr. Lohman is a 26 year-old driver in Illinois. He has a history of seizures and has remained seizure free since 2011. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Lohman receiving an exemption.

*Nicholas Blake Malott*

Mr. Malott is a 22 year-old driver in Virginia. He has a history of a seizure disorder and has remained seizure free since January 2014. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Malott receiving an exemption.

*Kevin W. Mathis*

Mr. Mathis is a 28 year-old driver in New Jersey. He has a history of epilepsy and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Mathis receiving an exemption.

*Jason R. McKenzie*

Mr. McKenzie is a 45 year-old driver in Michigan. He has a history of seizures and has remained seizure free since 2012. He takes anti-seizure medication with the dosage and frequency remaining the same since 2013. If granted the exemption, he



would like to drive a CMV. His physician states that he is supportive of Mr. McKenzie receiving an exemption.

*Steven R. Plummer*

Mr. Plummer is a 60 year-old class A CDL holder in Ohio. He has a history of a movement disorder with symptoms of unsteadiness and muscle twitching. He has no history of seizure. He takes anti-seizure medication for his movement disorder and his physician states his symptoms remain stable. If granted an exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Plummer receiving an exemption.

*Benjamin A. Reineke*

Mr. Reineke is a 44 year-old class A CDL holder in Ohio. He has a history of seizures and has remained seizure free since 2005. He takes anti-seizure medication with the dosage and frequency remaining the same since that time. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Reineke receiving an exemption.

*Clinton James Howard Sheller*

Mr. Sheller is a 21 year-old class A CDL holder in Indiana. He has a history of a seizure disorder and has remained seizure free since 2010. He takes anti-seizure medication with the dosage and frequency remaining the same since 1996. If granted the exemption, he would like to drive a CMV. His physician states that he is supportive of Mr. Sheller receiving an exemption.

## **Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: January 12, 2015.

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Larry W. Minor,  
Associate Administrator for Policy.

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